

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

State of Oklahoma, et al.,

Plaintiffs,

v.

Tyson Foods, Inc., et al.,

Defendants.

05-CV-0329 GKF-SAJ

**AFFIDAVIT OF  
DELMAR EHRLICH  
IN SUPPORT OF FEES AWARDED  
TO DEFENDANTS BY  
ORDER OF MAY 20, 2008**

STATE OF MINNESOTA )

) ss.

COUNTY OF HENNEPIN

I, Delmar R. Ehrich hereby state as follows:

1. I am a partner at Faegre and Benson, LLP and represent Cargill, Inc. and Cargill Turkey Production, LLC (“the Cargill Defendants”) in the above-captioned litigation. I make this affidavit on personal knowledge and submit it in support of Defendants’ application for costs and fees arising from their Motion To Compel Plaintiffs’ Compliance With The Court’s Order On Data Production, pursuant to the Order of May 20, 2008 at Docket No. 1710.

2. Upon granting Defendants' Motion to Compel Compliance, the Court directed Defendants to file an itemized statement of costs and expenses relating to the filing of, and hearing on, the motion by June 19, 2008. (Dkt. No. 1710 at 6.)

3. The Court's May 20, 2008 Order focused largely on Plaintiffs' several post-motion productions of data admittedly subject to this Court's January 5, 2007 Order compelling production of the State's scientific information. In particular, the Court noted the Affidavit of Ms. Kristen Shults Carney (Dkt. No. 1672-2), attorney for the Cargill Defendants, demonstrating that – contrary to Plaintiffs' representations to the Court – the vast majority of the data Plaintiffs

produced after Defendants filed their Motion to Compel Compliance was, in fact, new data that Plaintiffs had improperly withheld. (See Order of May 20, 2008 at 4: Dkt. No. 1710.)

4. The Cargill Defendants were the primary drafters of Defendants' joint motion (Dkt. No. 1605), as well as the reply (Dkt. No. 1672) and the related single-page motion for expedited consideration (Dkt. No. 1673). Mr. Robert F. Sanders, counsel for the Cal-Maine Defendants, argued the motion on behalf of the joint defense group and submits a separate affidavit for costs and fees. Because this was a joint defense effort, however, all Defendants provided input and reviewed, analyzed, and approved the drafts before filing.

5. I am the responsible partner at Faegre & Benson for the Cargill Defendants' defense in this litigation. In this capacity, I oversee all Faegre & Benson work on the case and review and approve all Faegre & Benson billings.

6. Although I and others at Faegre & Benson weighed in and reviewed the briefing at issue, the primary drafters were Bruce Jones, Kristen Shults Carney, and Krisann Kleibacker Lee.

6. Kristin Shults Carney is a senior associate in Faegre & Benson's Denver office. In connection with the briefing at issue, among other things, Ms. Carney drafted a summary of the scientific productions by the State and reviewed and analyzed the parties' correspondence regarding the same. She drafted her Affidavit in support of Defendants' reply and its detailed explanatory chart describing the data produced by the State after Defendants filed their motion. Ms. Carney reviewed and commented on all other draft briefing, and gathered and analyzed supporting exhibits. Ms. Carney also analyzed and oversaw the review of all of the State's post-motion productions of data, in addition to coordinating efforts among the joint defendants on data motion issues. Ms. Carney also analyzed and reviewed all the State's relevant briefing, and assisted in oral argument preparation. Throughout the process, Ms. Carney exchanged analyses

and met with Mr. Jones and Ms. Kleibacker Lee and other team members regarding strategy for the motion.

7. The following chart specifically itemizes Ms. Carney's work reviewing and analyzing the State's post-motion production of data, and their representations about the same:

Date	Number of Hours	Description of Work Performed
3/26/08	0.6	Review and comment on State's response to motion; discuss strategy for reply with B. Jones and K. Kleibacker Lee
3/28/08	0.3	Communicate with co-defendants regarding state of data production; plan for review of newly produced data
4/1/08	0.3	Discuss plan for review of newly produced data with team
4/2/08	2.5	Review and comment on State's scientific production for reply to data motion; discuss same with team
4/3/08	2.5	Prepare information for reply to data motion
4/4/08	0.2	Communicate with team regarding reply to data motion
4/5/08	0.5	Review and comment on draft reply brief
4/7/08	5.3	Draft affidavit in support of reply brief; cite check data summary for reply brief; communicate with team and joint defense group regarding same; review and comment on revisions to reply brief; communicate with paralegal regarding State's data production
4/8/08	3.0	Finalize affidavit and chart for reply; communicate with team and K. Kleibacker Lee regarding same
4/29/08	1.0	Review and comment on State's surreply
4/30/08	0.5	Discuss State's surreply and related issues with team
5/1/08	0.3	Discuss State's surreply and related issues with team
5/5/08	3.8	Work on oral response to State's surreply in preparation for hearing; meet with team regarding same

In total, Ms. Carney billed 20.8 hours in reviewing and analyzing the State's post-motion productions of data, in working on the Reply and drafting the Affidavit upon which this Court relied in its Order, and in responding to Plaintiffs' Surreply, which attempted to justify Plaintiffs' late data productions. The Cargill Defendants incurred \$5,932.16 in fees for these particular efforts by Ms. Carney, whose relevant hourly rate is \$285.20.

8. Bruce Jones is a partner in Faegre & Benson's Minneapolis office. Mr. Jones researched grounds for bringing the motion to compel compliance and researched the status of

data production in this action. He reviewed, analyzed, revised, and edited all the draft briefing. Mr. Jones engaged in many strategy discussions with counsel for the other Defendants regarding this motion practice. Mr. Jones also analyzed and reviewed all the State's relevant briefing, and assisted in oral argument preparation. Throughout the process, Mr. Jones exchanged analyses and met with Ms. Carney and Ms. Kleibacker Lee and other team members regarding strategy for the motion. He also supervised Ms. Carney and Ms. Kleibacker Lee's work.

9. Krisann Kleibacker Lee is a senior associate in Faegre & Benson's Minneapolis office. Ms. Kleibacker Lee drafted, revised, and edited the motion and integrated supporting memorandum, the reply brief, and the single-page motion for expedited consideration. In preparing the drafts, she performed legal research and analysis and also reviewed and analyzed the history of the State's data productions and all relevant correspondence between the parties. She reviewed, analyzed, revised, and edited Ms. Carney's Affidavit and supporting chart. Ms. Kleibacker Lee also gathered supporting exhibits and finalized all papers for filing. She analyzed and reviewed all the State's relevant briefing, and assisted in oral argument preparation. Throughout the process, Ms. Kleibacker Lee exchanged analyses and met with Mr. Jones and Ms. Carney and other team members regarding strategy for the motion.

10. Mr. Jones, Ms. Carney, and Ms. Kleibacker Lee collectively billed over 95 hours related to Defendants' Motion to Compel Compliance, for which the Cargill Defendants incurred fees in excess of \$25,000. The Cargill Defendants stand ready to provide timesheet back up for all the above descriptions should the Court want to review them *in camera*.

10. On June 4, 2008, the State filed an Objection to the Court's May 20, 2008 Order. The Cargill Defendants incurred significant additional expense – not included in the itemizations and summaries above – in drafting and filing a response to that Objection on June 16, 2008.

11. As described in the accompanying Affidavit of co-counsel Ms. Theresa Noble

Hill, the Cargill Defendants incurred additional fees of \$964.00 from the related efforts of the Rhodes, Hieronymus, Jones, Tucker & Gable law firm.

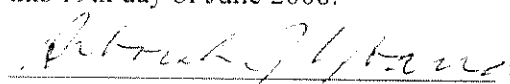
12. All told, the Cargill Defendants incurred more than \$26,000 in unnecessary fees due to the State's demonstrated violation of the Court's discovery Order and the Federal Rules.

13. The Court's January 5, 2007 Order expressly directed Plaintiffs to produce specific information and documents, and the Court's May 20, 2008 Order correctly found that Plaintiffs had repeatedly failed to comply with that direction. Although the Cargill Defendants believe that a monetary sanction for this breach is appropriate and necessary, they also recognize that Plaintiffs are public entities. Accordingly, the Cargill Defendants seek only those Faegre & Benson fees, itemized above, that they incurred through Ms. Carney's post-motion efforts to review, analyze, and explain to the Court the State's late-produced scientific information: \$5,932.16. The Cargill Defendants also seek the \$964.00 in fees for the Rhodes Hieronymus law firm incurred in connection with the review and filing of the requisite briefing. This highly discounted sanction of \$6,896.16 would not compensate the Cargill Defendants for all their unnecessary costs occasioned by having to bring the underlying motion. However, the Cargill Defendants submit that this amount would serve to punish the State for its discovery abuses and, most importantly, to deter the State from continuing its dilatory discovery practices.

THIS CONCLUDES MY AFFIDAVIT.

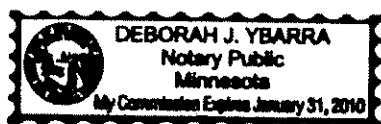
  
Delmar R. Ehrich

Subscribed and sworn to before me  
this 19th day of June 2008.

  
Notary Public

My commission expires: 1/31/2010

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

State of Oklahoma, et al.,

Plaintiffs,

V.

Tyson Foods, Inc., et al.,

Defendants.

**Civil No. 05-CV-0329 GKF-SAJ**

**AFFIDAVIT OF THERESA N. HILL IN SUPPORT OF  
FEES AWARDED TO DEFENDANTS BY ORDER OF MAY 20, 2008**

[illegible]

I, Theresa N. Hill, hereby state as follows:

1. I am a partner with the law firm of Rhodes, Hieronymus, Jones, Tucker & Gable, P.L.L.C.
2. Our firm represents Cargill, Inc. and Cargill Turkey Production, LLC in the above-styled litigation.
3. Counsel for the Cargill Defendants reviewed, commented upon, and filed Defendants' Motion to compel Plaintiffs' Compliance with the Court's Order on Data Production, Dkt. 1605 ("Motion to Compel") and Defendants' Reply in Support of Motion to Compel Plaintiffs' Compliance with the Court's Order on Data Production, Dkt. 1672 ("Reply").

4. John H. Tucker, Leslie J. Southerland, Candace J. Smith and I assisted in these efforts..

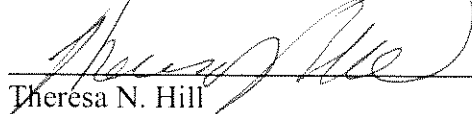
5. I have reviewed our billing reports and determined that \$736.00 in fees were incurred in the review and filing of Defendants Motion to Compel and Reply.

6. In addition, I conferred with Plaintiffs' counsel concerning the State of Oklahoma's Motion for Leave to File Sur-Reply Brief, Dkt. 1674 and Defendants' Motion for Expedited Consideration of Motion to Compel Plaintiff's Compliance with Court's Order on Data Production, Dkt. 1673 ("Motion for Expedited Consideration"). Our firm also assisted in the review and filing of Defendants' Motion for Expedited Consideration.

7. I have reviewed our billing reports and determined that \$228.00 in fees were incurred in the above-referenced conferences and in the review and filing of Defendants' Motion for Expedited Consideration.

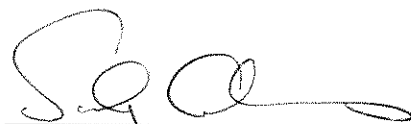
8. The total amount of relevant fees incurred by the Cargill Defendants is \$964.00.

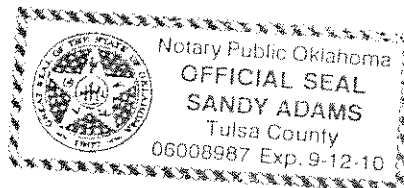
THIS CONCLUDES MY AFFIDAVIT:

  
Theresa N. Hill

Subscribed and sworn before me

This 19th day of June, 2008

  
Notary Public



AFFIDAVIT OF ROBERT E. SANDERS

STATE OF MISSISSIPPI  
COUNTY OF HINDS

PERSONALLY APPEARED BEFORE ME, the undersigned authority for the jurisdiction aforesaid, ROBERT E. SANDERS, who, having been first duly sworn, stated on his oath the following:

1. My name is Robert E. Sanders. I am one of the attorneys of record for Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. in this proceeding. I am over the age of twenty-one, and I have personal knowledge of the matters set out in this affidavit.

2. This affidavit is made pursuant to Fed.R.Civ.P. 37 and Local Rule 54.2, and in response to this Court's Order of May 20, 2008. (Dkt. No. 1710)

3. My normal billing rate is \$200 per hour. This is the rate at which all of my work on this case is billed to Cal-Maine Foods, Inc. Cal-Maine Farms, Inc. does not receive a separate bill.

4. In conjunction with the May 6, 2008, argument on the Defendants' Motion To Compel Plaintiffs' Compliance With The Court's Order On Data Production (Dkt No. 1605)(hereinafter, "Motion to Compel"), I expended the following amount of time on the following tasks and events:

<u>Date</u>	<u>Hours</u>	<u>Task or Event</u>
5/02/08	7.40	Begin review of materials associated with Defendants' Motion to Compel; e-mail to Del Ehrich re Motion; Telephone conference with Del Ehrich re Motion; e-mail exchange with Michael Bond re plaintiff's latest CD of data; receive and review data from Michael Bond re plaintiff's latest data production; Begin preparation for oral argument on Motion to Compel
5/04/08 (Sunday)	4.40	Continue preparation for oral argument on Motion to Compel
5/05/08	1.60	Continue preparation for oral argument on Motion to Compel
	6.10	Portal to portal travel from Jackson, MS to Tulsa, OK



	.30	Two telephone conferences with Kristen Carney re affidavits in Motion to Compel
5/06/08	.20	Telephone conference with Kristen Carney re affidavits in Motion to Compel
	.40	Present oral argument on Motion to Compel
5/07/08	6.10	Portal to portal travel from Tulsa, Ok to Jackson, MS

5. The total billable time dedicated by me to the Motion to Compel was 26.5 hours. At my normal billing rate of \$200 per hour, the total fee for my participation in the prosecution of the Motion to Compel was \$5,300.

6. Expenses for my participation in the prosecution of the Motion to Compel were:

a. \$ 396.50	Round trip ticket on Northwest Airlines
b. 193.17	One night at Tulsa Doubletree Downtown
c. <u>159.62</u>	One day car rental from Avis Car Rental
total: \$ 749.29	

7. The total of all fees and expenses for my participation in the prosecution of the Motion to Compel was \$6,049.29.

8. The expenses and billable time reflected above were necessary for my participation in the preparation for, and presentation of, oral argument on the Motion to Compel.

10. And further, affiant sayeth not.



Robert E. Sanders, *pro hac vice*  
Mississippi Bar No. 6446

SWORN AND SUBSCRIBED before me, this 16<sup>th</sup> day of June, 2008.



Notary Public

My Commission Expires:

May 20, 2010

